

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

PAULETTE L. CARRUTHERS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	FILE NO. 1:10-CV-3123-WSD-LTW
	:	
BAC HOME LOANS SERVICING,:	:	
LP, FKA COUNTRYWIDE HOME:	:	
LOANS SERVICING LP,	:	
	:	
Defendant.	:	

**BAC HOME LOANS SERVICING, LP'S REPLY BRIEF
IN SUPPORT OF MOTION TO DISMISS**

The recent filings by Plaintiff Paulette L. Carruthers (the "Plaintiff") have caused procedural confusion as to the proper path of this litigation. In response to a motion to dismiss (the "Original Motion to Dismiss") filed by Defendant BAC Home Loans Servicing, LP ("BAC" or "Defendant") (improperly-named as "BAC Home Loans Servicing, LP, FKA Countrywide Home Loans Servicing LP"), Plaintiff filed *both* an Opposition to the Original Motion to Dismiss filed by BAC (Doc. 7), and an Amended Complaint. (Doc. 8). As the Amended Complaint had the effect of mootng the Original Complaint, no reply brief is necessary here. *See Catholic Answers, Inc. v. United States*, 2009 U.S. Dist. LEXIS 70940, *6–7 (S.D. Cal Aug. 12, 2009) (denying motion to dismiss filed before an amended complaint

as moot). As such, BAC is filing a response to the Amended Complaint contemporaneously herewith.

In an abundance of caution, however, BAC submits this Reply Brief in Support of the Original Motion to Dismiss. Plaintiff's Opposition does nothing to fix the fatal defects in her Complaint. Plaintiff's Original Complaint simply fails to articulate any actionable claims against BAC, as a matter of law. In the event that the Court determines that Plaintiff's Original Complaint is the operable complaint here, the Court should dismiss Plaintiff's Original Complaint for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6).¹

¹ If the Court were to request further briefing regarding the issues raised by Plaintiff's Opposition, BAC would happily comply with the Court's directive. At this stage of the case, however, BAC believes that a further response to Plaintiff's Opposition would only compound the problem created by Plaintiff's recent conflicting filings.

Respectfully submitted this 10th day of November, 2010.

PARKER, HUDSON, RAINER & DOBBS LLP

/s/ Darren E. Gaynor

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Counsel for BAC Home Loans Servicing, LP

CERTIFICATE OF COMPLIANCE

In compliance with LR 7.1D, N.D. Ga., I certify that the foregoing **BAC HOME LOANS SERVICING, LP'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS** has been prepared in conformity with LR 5.1, N.D. Ga. This memorandum was prepared with Times New Roman (14 point) type, with a top margin of one and one-half (1 ½) inches and a left margin of one (1) inch. This memorandum is proportionately spaced, and is no longer than 15 pages.

/s/ Darren E. Gaynor
Darren E. Gaynor

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **BAC HOME LOANS SERVICING, LP'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS** upon all parties to this matter via first class U.S. mail addressed to Plaintiff as follows:

Paulette L. Carruthers
195 14th Street, 701
Atlanta, Georgia 30309

This 10th day of November, 2010.

/s/ Darren E. Gaynor
Darren E. Gaynor